

IN RE: SOLICITATION OF DONATIONS BY JUDGE BENJAMIN H. VIRREY, MTC, POLILLO, QUEZON.

Adm. Matter No. 90-7-1159-MTC. October 15, 1991

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PER CURIAM:

The respondent, Municipal Judge Benjamin H. Virrey of Polillo, Quezon, stands charged with unlawful solicitation of donations by complainant mayor Rafael C. Glinoga of Pitogo, Quezon.

The factual backdrop of this case shows that in a criminal case lodged before the respondent judge, all the twelve accused therein, who were represented by complainant mayor's "encargado" (overseer), Avelino Bello, were found guilty by Judge Virrey of two counts of illegal fishing under municipal ordinance no. 89-139 of Polillo, Quezon, and under Section 38 of Presidential Decree No. 704 in relation to Fisheries Administrative Order No. 164, series of 1964, and fined, accordingly, a total of P2,000.00 apiece. Judge Virrey, in addition, charged the accused a "donation" of P3,000.00 for an alleged "Judiciary Welfare Fund" (no receipt for which was issued, either from the trial court or the Supreme Court). [1] It is the collection of this sum of P3,000.00 that prompted the complainant mayor to write to this Court a letter-inquiry[2] specifically asking the following:

Why is it that aside from the P1,000.00 fine for violation of Municipal Ordinance No. 89-139 and P1,000.00 for violation of P.D. 704, a P3,000.00 donation was charged against defendants for the Judiciary Welfare Fund without Official Receipt of the Supreme Court?

Are not donations supposed to be voluntary? In the absence of an O.R. from the Supreme Court where will the P3,000.00 go?

The Court shortly directed Judge Virrey to explain the charges against him in a Resolution dated January 31, 1991.

In his explanation, Judge Virrey would have the P3,000.00 as "an isolated [transaction] made voluntarily by the donor who took pity on the deplorable condition of the court facilities, the decaying ceiling, the dilapidated condition of three typewriters." He admitted however using P1,000 thereof as a traveling allowance in going to and from another municipality to conduct a court hearing there.[3]

The administrative case against the respondent judge was referred to Antonio V. Mendez, Sr., Executive Judge of the Regional Trial Court of the 4th Judicial Region Branch 62, Gumaca for investigation, who submitted the following report and recommendation on September 3, 1991:

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Subject to the respondent's cross-examination, complainant Mayor Rafael C. Glinoga, in fine, testified upon clarificatory questions propounded by this Court; that he wrote the letter dated July 2, 1990 (Exhibit "A") when he received the information from witness Avelino Bello; that the latter is the "Encargado" of his fishing boat; that his "Encargado" gave Judge Virrey Five Thousand Pesos (P5,000.00); that a handwritten receipt was issued by Judge Virrey marked as Exhibit "B"; that no official receipt was actually received by his

"Encargado"; that in the course of investigation, Mayor Glinoga handed the Order dated July 2, 1990 signed by Judge Virrey; (Exhibit "C") that when Judge Virrey submitted his Comment on his letter dated July 11, 1991 (Exhibit "A") he made a Reply dated September 25, 1991, marked as Exhibit "D".

Witness Avelino Bello's testimony can be summarily stated as follows: that the incident of giving money to Judge Virrey happened in June or July 1990; that he gave Judge Virrey the sum of Five Thousand Pesos (P5,000.00) because, he was told to bring Five Thousand Pesos (P5,000.00) for payment of the fine; that he was not given a receipt except the one dated July 2, 1990 (Exhibit "B"); that said witness presented before this Court an affidavit which he executed before Judge Augusto T. Parcero and he affirmed and confirmed the contents thereof. x x x

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On his part, Judge Virrey admitted that he received the Five Thousand Pesos (P5,000.00). The Two Thousand Pesos (P2,000.00) was duly receipted and the Three Thousand Pesos (P3,000.00) was voluntarily given, for the improvement of the condition of the office. It is reflected in the record that Judge Virrey is willing to return the said amount but Mayor Glinoga refused to accept it. x x x

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This Court, upon meticulous study of the evidence on record believes that the only issue to be resolved is whether or not the money in the amount of Three Thousand Pesos (P3,000.00) was voluntarily given by witness Avelino Bello or solicited by Judge Benjamin H. Virrey.

Witness Avelino Bello categorically denied that the said money was given as donation. This statement is refuted by Judge Benjamin H. Virrey who claimed that the money was voluntarily given. This Court believes that the claim of Judge Virrey is tainted with incredibility. This Court is skeptical about the respondent's version on the following grounds: (1) Why would the complainant and the witness institute this administrative case if the said money was voluntarily given as claimed by the respondent Judge, out of liberality, for the welfare of the office, for the repair of typewriters and other court facilities? (2) Why the said amount was not officially receipted, as mandated by the Administrative Circular, if, given for the welfare fund?

In the Compliance dated March 13, 1991 and the Compliance dated March 18, 1991 both submitted by the respondent Judge, it is reiterated that he never solicited the donation, the said amount of money was voluntarily given by Avelino Bello, who in fact, insisted after the illegal fishing case was terminated. He explained that it was not officially receipted because he is "a new Judge and could not well comprehend the meaning and purpose of the welfare fund." "The amount of Three Thousand Pesos (P3,000.00) as donation was held in trust of which" he is accountable. "He never had the intention to profit himself nor other person, out of such donation."

After a careful consideration of his justification and explanation, this Court still believes that his conduct of soliciting for the office equipment, which is more apparent and real than his claim that it was voluntarily given, he openly transgressed the established norm for judicial behavior as contained in Paragraph 3 of Canons of Judicial Ethics which provides that (a) judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench in the performance of judicial duties, but also in his everyday life, should be beyond reproach. Paragraph 29 of the Canons of Judicial Ethics likewise provides that a judge "should not accept any presents or favors from litigants or from lawyers practicing before him." The conduct of judge, as ruled in *Lecaroz vs. Garcia*, in soliciting donations for office equipment and furnitures from entities and private persons is violative of the proper norm of judicial behavior." (107 SCRA 557).

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The Court finds the above report to be well-taken. We are accordingly sustaining the finding of the investigating

Executive Judge that the respondent judge is guilty of unlawful solicitation. Section 7(d) of Republic Act No. 6713[4] entitled "An Act Establishing A Code of Conduct and Ethical Standards for Public Officials and Employees..." provides:

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(d) Solicitation or acceptance of gifts. — Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

In *Lecaroz v. Garcia*,[5] we stated the reasons why a judge should not engage himself in any form of solicitation no matter how laudable his intentions. Thus:

Apparently, respondent Judge would claim justification for having solicited directly office equipment and furniture not only from the Marcopper Mining Corporation but also from other civic-spirited citizens and entities, not for personal gain but to refurbish and improve the municipal court. We do not, of course, denounce that intention of respondent Judge for such is even commendable rather than condemnable. But the means by which he set that intention in motion can not receive the imprimatur of approval of this Court. His conduct of soliciting for the office equipment in question would show that he openly transgressed the established norm for judicial behavior as contained in Paragraph 3 of the Canons of Judicial Ethics, which provides that "(a) judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach." Paragraph 29 of the Canons of Judicial Ethics likewise provides that a judge "should not accept any presents or favors from litigants or from lawyers practicing before him." Respondent Judge should have avoided giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office or the influence of his name to solicit donations from private parties. Marked attention and unusual hospitality on the part of private parties to a judge engender misinterpretation of his motive and should thus be avoided. Judges, in general should refrain from pursuing such a course of conduct, which, in the normal course of events reasonably to be expected, might bring their actuations into conflict with the impartial performance of their official duties, which present hazards to the proper administrative of justice.

Under the circumstances, the act of respondent Judge discloses a deficiency in the prudence, discretion and judgment that a member of the judiciary must exercise in the performance of his functions, if the bench is to command the respect due thereto. In his effort to furnish and equip well his office, respondent judge should not lose sight of the proper judicial norm.[6]

In this case, the respondent judge similarly solicited a "donation" for the alleged refurbishment of his office, and worse, used P1,000.00 out of the P3,000.00 for his own travel expenses. And like *Lecaroz*, the respondent judge would try to hide his reprehensible conduct under the guise of public interest. It is such an act, from no less a person charged with the dispensation of justice, that corrodes the public's trust in the judicial system. This act we cannot, and must not, countenance.

A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.[7] Public confidence in the judiciary is eroded, by irresponsible or improper conduct of judges. A judge must avoid all impropriety and the appearance thereof. Being the subject of constant public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen.[8]

A magistrate must comport himself at all times in such a manner that his conduct, official and otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice.[9] The

respondent judge's act of solicitation and misappropriating the money so solicited do not speak well of his maturity as a jurist or his fitness to serve the public trust. The office of a judge exists for one solemn end — to promote justice and thus aid in securing the contentment and happiness of the people.[10] A judge, so it has often been said, is like Ceasar's wife, and like her, he must be above suspicion and beyond reproach. Failure to meet this exacting standard warrants one's dismissal from the service.

The herein respondent judge had violated Canons 1 and 2 of the Code of Judicial Conduct (1987),[11] a serious offense punishable by dismissal from the service with forfeiture of benefits and prejudice to reinstatement.[12]

WHEREFORE, the respondent Judge is hereby DISMISSED from the service with forfeiture of his retirement benefits, if any, and with prejudice to reinstatement or appointment to any public office including government-owned or controlled corporations. Let a copy of this resolution be included in his record and served on all courts throughout the land.

SO ORDERED.

Fernan, C.J., Narvasa, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.
Melencio-Herrera, J., on leave.

[1] "People of the Philippines vs. Ruben Dalida, et al.," Municipal Circuit Trial Court of Polillo-Panukulan, Quezon, Benjamin H. Virrey, Judge; Rollo, 33.

[2] Exhibit "A"; Rollo, 13.

[3] 2nd Indorsement, August 28, 1990; Rollo, 8-9.

[4] Rep. Act No. 6713 (1989).

[5] Lecaroz v. Garcia, Adm. Matter No. 2271-MJ. September 18, 1981, 107 SCRA 557.

[6] Italics supplied.

[7] Rule 2.01, Canon 2, Code of Judicial Conduct (187).

[8] Rule 2.01, Canon 2, Commentaries and Feedback on the Code of Judicial Conduct (1989).

[9] Montemayor v. Judge Callado, A.M. 2519-MJ, September 10, 1981.

[10] Canons of Judicial Ethics, 1.

[11] Canon 1

A judge should uphold the integrity and independence of the judiciary.

Canon 2

A judge should avoid impropriety and the appearance of impropriety in all activities.

[12] Amendments to Rule 140 of the Rules of Court re: charges against judges (1990).

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